

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 156 OF 2004.

Mrs. Vatsala Gadekar,
60 years of age, married,
w/o Shri Gurudas Gadekar,
resident of House No.1339,
Raia, Dhaman, Goa,
presently in Central Jail,
Aguada, Goa. ... Applicant.

VERSUS

The State,
Through the Public Prosecutor,
Panaji, Goa. ... Respondent.

Shri Gopal M. Kanekar, Advocate for the Applicant.

Ms. W. Coutinho, Addl. Public Prosecutor for the
State/Respondent.

CORAM: N.A. BRITTO, J.

DATE: 16TH JULY, 2004.

ORAL ORDER:

The applicant-accused in Crime No.32/03 under Section 302 and other Sections of I.P.C. and Section 27 of the Arms Act 1959 seeks bail on ground of sickness in terms of the proviso below sub-section (1) of Section 437 of the Code of Criminal Procedure 1973. It appears that an attempt was made on similar grounds before the learned Addl. Sessions Judge, stating that the accused was an old and sickly person and had to undergo cataract operation, but the same did not find favour with the learned Addl. Sessions Judge who was pleased to reject her application by Order dated 6.1.2004.

2. Since then the accused has been operated of cataract and the medical certificate filed in support of the application shows that the accused was admitted on 17.6.2004 as a case of mature cataract of the right eye with hypertension and was operated for cataract surgery of the right eye on 18.6.2004 and was discharged on 19.6.2004 with advice to take rest for one month and to weekly follow-up at OPD-21, of Goa Medical College. The accused has also filed an affidavit stating that she is unable to do all her daily activities without the help of her family members and that her other eye is also infected. The accused has also stated she has to wash her daily clothes, utensils and to do other work and due to physical strain, her eye which is operated and her hands are swollen. However, what the accused has stated in her affidavit is not supported by any medical certificate.

3. There is no dispute that the daughter of the present accused was admitted to bail by Order of this Court dated 26.5.2004 and, as stated by this Court, in peculiar facts and circumstances of that case, the said daughter had then delivered her child who was hardly about 15 days old.

4. Shri Kanekar, the learned advocate of the accused, submits that the accused is an old person who

is suffering from hypertension and also who has been operated for cataract of her right eye and on those grounds of sickness, she be admitted to bail.

5. On the other hand, Ms. Coutinho, the learned Addl. Public Prosecutor is quick to submit that it is not ever sickness which entitles a person to be on bail and that sickness to be a ground for bail must be a sickness which would involve danger to the life of the accused in case such accused has to continue to be in jail during trial. The learned Addl. P.P. has also brought to my notice an unreported judgment dated 22.5.2003 in Criminal Misc. Application No.95/2003 filed by Shri Shaikh Abdul Kader. In that case this Court took note of the observations of the Hon'ble Supreme Court in the case of **State through Deputy Commissioner of Police, Special Branch, Delhi v. Jaspal Singh Gill** (1984) 3 SCC 555 and held that the health of the accused was not such that it would be deteriorated to such an extent that he would require constant medical attention which warranted his release. It may be noted that the case of Shri Shaikh Abdul Kader, was a case where the said accused had undergone by-pass surgery about four years back. In my opinion the case of the present accused is not a case where proper treatment cannot be given to the accused while the accused is in judicial custody. It is also not the

case of the accused that from the time of the operation that the accused is not getting proper medical treatment. Considering the case of the accused that she has only been operated for cataract of the right eye, proper treatment could be given to her by the jail authorities as and when required. As far as the age of the accused is concerned, she is about 55 years of age and the hypertension which she is suffering from could also be taken care of by the prison authorities by providing medical treatment to her as and when required.

6. Considering the facts of this case, in my opinion, the accused is not entitled to be granted bail on the ground of sickness. Hence the application is hereby dismissed.

Authenticated copy, duly certified by the Court Sheristedar be issued to the Addl. Public Prosecutor.

N.A. BRITTO, J.

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